

1
2
3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5
6 OAKLAND DIVISION

7 JUNIPER NETWORKS, a Delaware corporation,
8

9 Plaintiff,

10 vs.

11 PETER M. SHIPLEY, an individual,
12

13 Defendant.

Case No: C 09-0696 SBA

**ORDER FOR SUPPLEMENTAL
BRIEFING**

14 Presently on the Court's law and motion calendar for July 28, 2009 is Defendant's Motion
15 to Dismiss Plaintiff's Amended Complaint for Failure to State a Claim Upon Which Relief Can Be
16 Granted, pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket 26.) In its reply brief,
17 Defendant raises for the first time the argument that Plaintiff has failed to plead a cognizable injury
18 under 35 U.S.C. § 292. In support of his argument, Defendant cites a recent district court decision
19 in which the court applied that rationale and dismissed a section 292 claim for lack of subject
20 matter jurisdiction. See Stauffer v. Brooks Brothers, Inc., 615 F. Supp. 2d 248, 251 (S.D.N.Y.
21 2009). Defendant posits that in light of Stauffer, the Court should dismiss the Amended Complaint
22 under Rule 12(b)(1) as well as Rule 12(b)(6).

23 The Court generally does not consider arguments or requests made for the first time in a
24 reply brief. In this case, however, Defendant has raised an issue regarding the Court's subject
25 matter jurisdiction. Because the existence of subject matter jurisdiction is a threshold issue, the
26 Court orders supplemental briefing in connection with Defendant's motion to dismiss as set forth
27 below. Accordingly,
28

1 IT IS HEREBY ORDERED THAT:

2 1. By no later than August 7, 2009, Plaintiff shall submit a supplemental brief that
3 responds to Defendant's contention that the Amended Complaint should be dismissed under Rule
4 12(b)(1) for lack of subject matter jurisdiction.

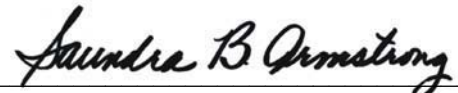
5 2. By no later than August 14, 2009, Defendant shall file his response to Plaintiff's
6 supplemental brief.

7 3. The supplemental briefs shall not exceed five (5) pages in length.

8 4. The Court will hold Defendant's motion to dismiss in abeyance pending submission
9 of the supplemental briefing. The Court will notify the parties if oral argument is necessary on the
10 motion. Otherwise, the Court may take the matter under submission without argument, pursuant to
11 Federal Rule of Civil Procedure 78(b).

12 IS IT SO ORDERED.

13
14 Dated: July 27, 2009



Hon. Sandra Brown Armstrong
United States District Judge